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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CAPITOL HILL SUPERMARKET,
on behalf of itself and all others
similarly situated,

Case No.

'15CV1867 AJB WVG

Plaintiff

CLASS ACTION COMPLAINT

v.
BUMBLE BEE FOODS LLC, TRI-
UNION SEAFOODS LLC, and
STARKIST COMPANY.

JURY TRIAL DEMANDED

Defendants.

Plaintiff Capitol Hill Supermarket (“Plaintiff”), by and through its undersigned attorneys, alleges as follows. Other than those relating directly to Plaintiff, all allegations herein are upon information and belief.

NATURE OF THE ACTION

1. Bumble Bee Foods LLC, Tri-Union Seafoods LLC, and StarKist Company (collectively, “Defendants”) are the three largest producers of packaged seafood products (“PSPs”) in the United States, its territories, and the District of Columbia. This action concerns their conspiracy—which began no later than July

1 24, 2011 and continues to the present (the “Class Period”)—to fix, raise, maintain,
2 and/or stabilize prices for PSPs within the United States. As used in this
3 Complaint, the term “PSPs” refers to shelf-stable seafood products (predominantly
4 tuna) that are sold in cans, pouches, or ready-to-eat serving packages.

5 2. Plaintiff, an indirect purchaser of PSPs, brings this lawsuit as a class
6 action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of
7 residents of jurisdictions which proscribe the Defendants' unlawful conduct, as
8 described in this Class Action Complaint. These jurisdictions include Arizona,
9 Arkansas, California, the District of Columbia, Florida, Illinois, Iowa, Kansas,
10 Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New
11 Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon,
12 Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West
13 Virginia, and Wisconsin. Plaintiff brings this lawsuit individually and on behalf of
14 all legal entities that indirectly purchased packaged seafood products for their own
15 use in food preparation, rather than for resale, from one or more Defendant or any
16 predecessor, subsidiary, or affiliate thereof, at any time between July 24, 2011 and
17 the present.

JURISDICTION AND VENUE

20 3. Plaintiff brings this state law class action to recover actual and/or
21 compensatory damages, double and treble damages as permitted, pre- and post-
22 judgment interest, costs, and attorneys' fees. Plaintiff also seeks nationwide
23 injunctive relief. Plaintiff seeks damages in excess of \$5,000,000. Plaintiff brings
24 this action under Section 16 of the Clayton Act (15 U.S.C. § 26) to secure equitable
25 and injunctive relief against Defendants for violating Section 1 of the Sherman Act
26 (15 U.S.C. § 1). Plaintiff also asserts claims for actual and exemplary damages
27 pursuant to state antitrust, unfair competition, and consumer protection laws, and
28 seeks to obtain restitution, recover damages, and secure other relief against

1 Defendants for violation of those state laws. Plaintiff and the Classes also seek
2 attorneys' fees, costs, and other expenses under federal and state law. This Court
3 has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §
4 1332(d).

5 4. Venue and personal jurisdiction are proper in this judicial district
6 pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22). Personal jurisdiction is
7 proper in this district as each Defendant resides, is found, transacts business, or has
8 an agent in the United States, including in this district. Venue is also proper in this
9 judicial district pursuant to 28 U.S.C. § 1391(b) and (c), and, because at least one
10 of the Defendants resides is licensed in or is conducting business in this judicial
11 district, and because a substantial portion of the unlawful and anticompetitive
12 conduct affecting interstate trade and commerce was engaged in and carried out by
13 Defendants in this judicial district.

PARTIES

16 5. Plaintiff Capitol City Supermarket is a sandwich shop located at 241
17 Massachusetts Avenue, N.E., Washington, D.C. 20002. For at least the past eight
18 years, Plaintiff has purchased numerous Defendant Tri-Union Seafoods LLC's
19 PSPs—specifically, its Chicken of the Sea brand of shelf-stable tuna—from
20 wholesale suppliers located in the District of Columbia. Plaintiff uses the PSPs it
21 indirectly purchases from Defendant Tri-Union Seafoods LLC to make tuna salad
22 for sandwiches for its customers. It does not resell PSPs.

23 6. Defendant Bumble Bee Foods LLC (“Bumble Bee”) is a domestic
24 corporation with its principal place of business at 280 10th Avenue, San Diego CA
25 92101. Bumble Bee produces and sells PSPs throughout the United States, its
26 territories, and the District of Columbia. Bumble Bee is privately owned by Lion
27 Capital (“Lion”), which is based in the United Kingdom.

28 || 7. Defendant Tri-Union Seafoods LLC is a domestic corporation with its

1 principal place of business at 9330 Scranton Road, Suite 500, San Diego, CA
 2 92121. Tri-Union Seafoods LLC produces and sells PSPs throughout the United
 3 States, its territories, and the District of Columbia. It markets these products under
 4 the brand name Chicken of the Sea. Unless otherwise indicated, Tri-Union Foods
 5 LLC will be referred to herein as “CoS”. CoS is owned by Thai Union Frozen
 6 Products (“TUF”), a company based in Thailand.

7 8. Defendant StarKist Company (“StarKist”) is a domestic corporation
 8 with its headquarters at 225 North Shore Drive, Suite 400, Pittsburgh PA 15212
 9 StarKist produces and sells PSPs throughout the United States, its territories, and
 10 the District of Columbia. StarKist is privately owned by Dongwon Enterprise
 11 (“Dongwon”), which is based in South Korea.

12 9. Upon information and belief, at all relevant times, other producers of
 13 PSPs willingly conspired with Defendants in their unlawful restraint of trade. All
 14 averments herein against Defendants are also averred against these unnamed co-
 15 conspirators.

16 10. The acts alleged to have been done by Defendants were authorized,
 17 ordered, or performed by their directors, officers, managers, agents, employees, or
 18 representatives while actively engaged in the management of Defendants’ affairs.
 19

INTERSTATE TRADE AND COMMERCE

20 21. Throughout the Class Period, there was a continuous and
 22 uninterrupted flow of invoices for payment, payments, and other documents
 23 essential to the sale of packaged seafood products in interstate commerce
 24 between and among offices of Defendants and their customers located
 25 throughout the United States, its territories, and the District of Columbia.

26 27. Throughout the Class Period, Defendants transported substantial
 28 amounts of PSPs in a continuous and uninterrupted flow of interstate commerce
 throughout the United States, its territories, and the District of Columbia.

1 13. Throughout the Class Period, Defendants' unlawful activities took place
2 within and substantially affected the flow of interstate commerce and had a direct,
3 substantial, and reasonably foreseeable effect upon commerce in the United States,
4 its territories, and the District of Columbia.

FACTUAL ALLEGATIONS

7 14. PSPs are sold to directly to, among other entities, restaurant wholesale
8 suppliers, retail groceries, grocery cooperatives, and mass merchandisers. These
9 direct purchasers then sell PSPs to various customers, including restaurants.

15. According to a May 2012 presentation by Bumble Bee, total United States retail sales of shelf-stable seafood products were \$2.346 billion in 2011 and were estimated to be \$2.397 billion in 2012. In one report, Bumble Bee estimated that canned tuna represents 73% of this value. In the same report, Bumble Bee estimated that total United States retail sales of shelf-stable tuna were \$1.719 billion in 2011 and were estimated to be \$1.750 billion in 2012.

16. Defendants are the three largest domestic manufacturers of PSPs.
17 The industry is highly concentrated. According to the aforementioned
18 presentation by Bumble Bee, it had 29% of the domestic shelf-stable seafood
19 market in 2011, CoS had 18.4%, and StarKist had 25.3%. The remaining market
20 share was comprised of smaller companies and private label brands. With respect
21 to shelf-stable tuna, StarKist had 34.6% of the market, Bumble Bee had 27.8%,
22 and CoS had 19.4%. In December of 2014, the *Wall Street Journal* reported that
23 the Defendants' respective shares of the domestic market for canned tuna were
24 13% for CoS, 25% for Bumble Bee, and 36% for StarKist. Bualuang Securities
25 reported the shares for the domestic canned tuna market slightly differently, with
26 StarKist at 30%, Bumble Bee at 28%, and CoS at 20%.

27 17. This oligopolistic structure within the industry is the result of recent
28 mergers and acquisitions. For example, in 1997, the investment group Tri-Union

1 Seafoods LLC—of which TUF was a member—acquired Van Camp Seafood
2 Company (“Van Camp”). Thereafter, TUF bought out the other investors to
3 acquire Van Camp completely, which it renamed Chicken of the Sea
4 International, an entity that was later merged into Tri-Union Seafoods LLC. In
5 2008, Dongwon acquired StarKist from Del Monte Foods for \$363 million.
6 Similarly, in 2014, TUF bought King Oscar, a Norwegian sardine canner that
7 sold 37% of its products in the United States. And in December of 2014, TUF
8 announced the acquisition from Lion (subject to regulatory approval) of
9 Bumble Bee for \$1.51 billion. The combination of CoS and Bumble Bee would
10 have created a virtual duopoly, with the combined entity substantially exceeding
11 the market share of StarKist. TUF had planned to finance the acquisition partly
12 through a preferential public offering to existing shareholders that would have
13 raised approximately \$380 million.

14 18. On July 23, 2015, TUF suspended the preferential public offering in
15 light of a grand jury investigation commenced by the Antitrust Division of the
16 United States Department of Justice (“DOJ”). TUF disclosed on that day that
17 both Bumble Bee and CoS had received grand jury subpoenas relating to an
18 antitrust investigation of PSPs. The publication *Undercurrent News* further
19 reported in an article dated that same day that “Thai Union held a conference with
20 analysts on the suspension of the share offer, in which the company’s management
21 said other US seafood producers have also received a subpoena requiring the
22 production of relevant information to the DOJ.” The publication *Global
Competition Review* similarly reported as follows:

24 In a letter to the Bangkok stock exchange on Wednesday,
25 Thai Union chairman Kraisorn Chansiri confirmed that
26 the US Department of Justice is investigating his
27 company’s sector, causing Thai Union to suspend a stock
28 issuance that had been intended to finance the \$1.5
billion acquisition of Bumble Bee.

1 He said the Thai Union subsidiary Tri-Union Seafoods,
 2 which operates in the US under the Chicken of the Sea
 3 brand, had received a subpoena “requiring Tri-Union to
 4 provide relevant information to the DOJ in relation to an
 5 antitrust investigation of the packaged seafood industry
 6 in the United States.”

7 19. The article goes on to state:

8 An Industry expert said the subpoena does not appear to
 9 be limited to the merger review, and early information
 10 indicates the demand for information came from a
 11 separate section of the antitrust division, not one tasked
 12 with analyzing deals.

13 It is highly likely that something produced in the merger
 14 investigation sparked this investigation touching the
 15 industry as a whole rather than just the parties to the deal,
 16 he said.

17 *****

18 The source said others in the industry are now
 19 anticipating that they too will be subpoenaed

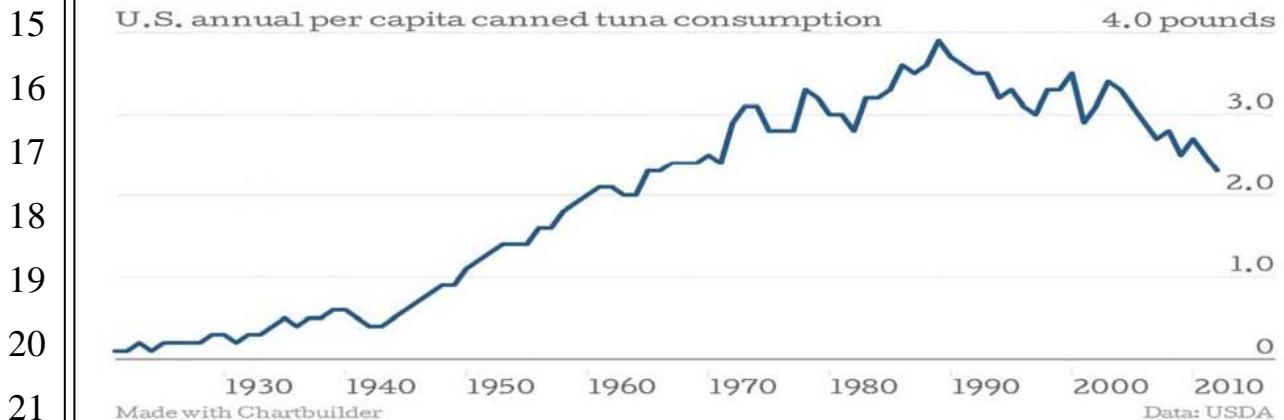
20 20. Based on these statements, it appears that StarKist received a subpoena
 21 as well, and that the DOJ’s investigation extends to the entire domestic PSP sector.

22 21. The fact that these companies received subpoenas from a federal grand
 23 jury is significant, as is reflected in Chapter 3 of the 2014 edition of the DOJ’s
 24 Antitrust Division Manual, available at
<http://www.justice.gov/atr/public/divisionmanual/chapter3.pdf>. Section F.1 of
 25 that chapter notes that “staff should consider carefully the likelihood that a grand
 26 jury investigation developed evidence confirming the alleged anticompetitive
 27 conduct, the Division would proceed with a criminal prosecution.” *Id.* at 111-82.
 28 The staff request needs to be approved by the relevant field chief and is then sent
 29 to the Antitrust Criminal Enforcement Division. *Id.* “The DAAG [Deputy Assistant

1 Attorney General] for Operations, the Criminal DAAG, and the Director of
 2 Criminal Enforcement will make a recommendation to the Assistant Attorney
 3 General. If approved by the Assistant Attorney General, letters of authority are
 4 issued for all attorneys who will participate in the grand jury investigation.” *Id.* at
 5 111-83. “The investigation should be conducted by a grand jury in a judicial
 6 district where venue lies for the offense, such as a district from or to which price-
 7 fixed sales were made or where conspiratorial communications occurred.” *Id.*

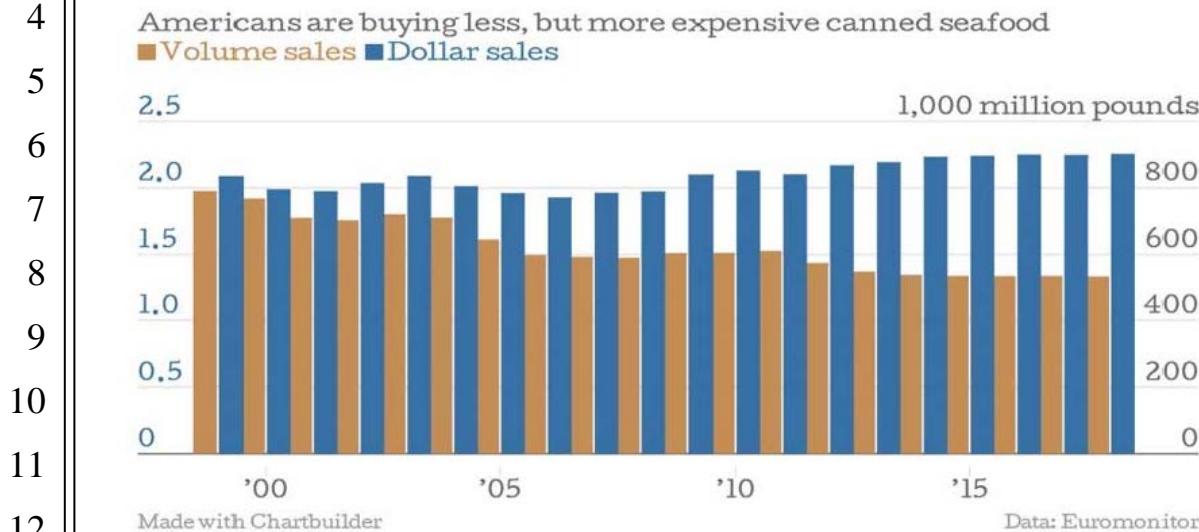
8 22. There are economic indications that support the conclusion that there
 9 was collusive pricing within the domestic PSP industry.

10 23. Consumption of PSPs, particularly canned tuna, has declined over the
 11 last ten years in the United States. The annual consumption per person was 3.1 lbs.
 12 in 2005, but had fallen to 2.3 lbs. in 2013. An article in the *Washington Post*
 13 graphically represented this decline by measuring United States annual *per capita*
 14 consumption from 1930 to 2010:



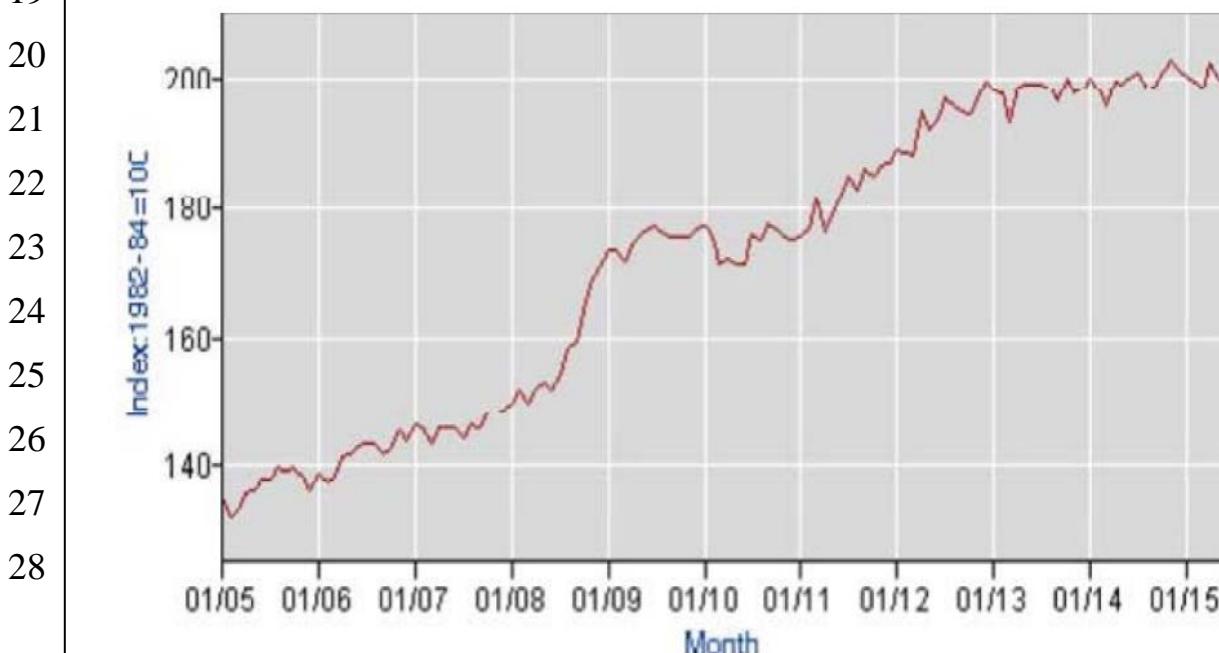
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 28

1 The same article presented this graph, showing that, while Americans are buying
 2 less canned seafood, they are paying more for what they do buy:



13

14 24. Given this decline in consumption of the signature PSP, one would
 15 expect rational businesses to reduce the prices for PSPs. But that did not happen.
 16 The following chart, taken from data available at the Bureau of Labor Statistics,
 17 depicts seasonally adjusted U.S. city average prices for shelf-stable fish and
 18 seafood from January 2005 through the first part of 2015, with the period 1982-84



1 used as a baseline.

2 25. Raw material costs do not adequately explain these price increases.
 3 While the cost per metric ton of skipjack tuna rose in 2012 and early 2013, it
 4 declined precipitously thereafter. According to the April 19, 2015 issue of *Tuna*
 5 *Market Intelligence*, “[a]s recently as June last year, skipjack was selling at
 6 US\$1,800 in Bangkok. But the price has since plummeted to US\$1,000 since the
 7 beginning of the year, with industry officials anticipating further reductions in
 8 price this year.” Tuna exporters in Ecuador noted in January of 2015 that the price
 9 per metric ton had declined from \$1400 to \$800. And the United Nations Food &
 10 Agriculture Organization stated in its May 2015 “Food Outlook” biannual report
 11 noted that tuna prices had dropped considerably in 2014: “tuna prices declined
 12 significantly due to excess supply, with frozen skipjack prices hitting a 6-year
 13 low.” Despite these drastically declining raw material costs, Defendants neither
 14 decreased prices nor tried to obtain more market share.

15 26. TUF's Annual Reports discuss this situation. In its 2013 Annual Report,
 16 TUF stated that “our branded tuna business showed resilient growth from 2012
 17 thanks to the price adjustments in Europe and more rational market competition in
 18 the US.” It said in the same report that its future profit margins would depend upon
 19 “[r]easonable US canned tuna competition without unnecessary price.” In its 2014
 20 Annual Report, TUF explicitly noted that this goal had been achieved:

21 Thanks to reduced price competition (absence of cut
 22 throat pricing) and generally lower fish cost, our own
 23 tuna brands marked a great year of increased
 24 profitability. Despite minimal sales growth in the US,
 25 competitive inventory cost and reasonable market
 26 conditions helped lift the margin of our US brand.

27 The same report went on to note that “sensible market competition, supported by
 28 raw material costs, made it possible for our own tuna brands to expand their
 29 margins through the year despite limited volume growth.” It indicated that future

1 revenue growth would again be dependent upon “[r]easonable US canned tuna
 2 market competition that focuses more on consumption creation than market share
 3 alone.” The “reasonable market conditions”, “more rational market competition”,
 4 “sensible market competition”, avoidance of battles for market share and “absence
 5 of cut throat pricing” that the reports note could only have come about through
 6 collusion. It would have been against the individual self-interest of each Defendant
 7 to eschew increasing market share during this period by lowering prices.

8 27. There were numerous business opportunities for Defendants to meet
 9 and engage in such collusion. The Tuna Council provides one such opportunity. As
 10 explained on that organization’s website:

11 The National Fisheries Institute’s Tuna Council
 12 represents the largest processors and household names
 13 for canned and pouch tuna in the U.S. including
BumbleBee®, *Chicken of the Sea®* and *StarKist®*. The
 14 Tuna Council speaks for the tuna industry on numerous
 15 issues including food safety, labeling, sustainability,
 16 nutrition education and product marketing.

17 28. The 2011-12 “Tuna the Wonderfish” advertising campaign exemplifies
 18 such joint conduct. This campaign was bankrolled by the Defendants and carried
 19 out under the auspices of the Tuna Council with the support of Thai processors. In
 20 it, the Defendants teamed up for marketing purposes. Joe Tuza, Senior Vice-
 21 President of Marketing for StarKist, reportedly said that “[w]e worked together
 22 surprisingly well.” He said further that the campaign, intended to increase
 23 consumption of tuna, was based on the hope that “as the water level rises . . . all
 24 boats rise with the tide,” referring to the three Defendant companies. The same
 25 philosophy appears to undergird the alleged price-fixing conspiracy.

26 29. Bilateral copacking agreements between Bumble Bee and CoS provided
 27 another opportunity to collude. Bumble Bee copacks for CoS at the former’s plant
 28 located in Santa Fe Springs, California with respect to West Coast sales. CoS does
 the same for Bumble Bee at the former’s plant in Georgia with respect to East

1 Coast sales. Thus, even before the proposed merger, these two companies were
2 cooperating closely. These interlocking relationships provided an excellent
3 opportunity to collude on pricing.

4

5 **CLASS ACTION ALLEGATIONS**

6 30. Plaintiff brings this action on behalf of itself individually and as a class
7 action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), seeking
8 equitable and injunctive relief on behalf of the following defined class (the
9 “Nationwide Class”):

10

11 All legal entities that indirectly purchased packaged
12 seafood products for their own use in food preparation,
13 rather than for resale, within the United States, its
14 territories, and the District of Columbia, from one or
15 more Defendant or any predecessor, subsidiary, or
16 affiliate thereof, at any time between July 24, 2011 and
17 the present. Excluded from the Nationwide Class are
18 governmental entities, Defendants, any parent, subsidiary
19 or affiliate thereof, and Defendants’ officers, directors,
20 employees, and immediate families.

21

22 31. Plaintiff brings this action on behalf of itself individually and as a class
23 action pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), on
24 behalf of the following defined class (the “Damages Class”):
25

26

27 All legal entities that indirectly purchased packaged
28 seafood products for their own use in food preparation,
rather than for resale, in Arizona, Arkansas, California,
the District of Columbia, Florida, Illinois, Iowa, Kansas,
Maine, Michigan, Minnesota, Mississippi, Missouri,
Nebraska, Nevada, New Hampshire, New Mexico, New
York, North Carolina, North Dakota, Oregon, Rhode
Island, South Carolina, South Dakota, Tennessee, Utah,
Vermont, West Virginia, or Wisconsin, from one or more
Defendant or any predecessor, subsidiary, or affiliate
thereof, at any time between July 24, 2011 and the
present. Excluded from the Damages Class are

1 Defendants, parent companies, predecessors, subsidiaries
2 and affiliates, and all governmental entities.

3 32. Due to the nature of the trade and commerce involved, Plaintiff believes
4 that Class members number at least in the thousands and are sufficiently numerous
5 and geographically dispersed throughout the United States, its territories, and the
6 District of Columbia so that joinder of all Class members is impracticable.

7 33. There are questions of law and fact which are common to the claims of
8 Plaintiff and the Class, including, but not limited to:

9 (a) Whether Defendants engaged in a combination or conspiracy to fix,
10 raise, maintain, and/or stabilize the prices for PSPs;

11 (b) Whether the purpose or effect of the acts and omissions alleged herein
12 was to restrain trade, or to affect, fix, control, maintain, and/or stabilize the prices
13 for PSPs;

14 (c) Whether Defendants engaged in unfair, false, deceptive, or
15 unconscionable behavior;

16 (d) Whether Defendants' conduct resulted in PSPs being sold at an
17 artificially high and noncompetitive level;

18 (e) Whether Defendants were unjustly enriched by the sale of PSPs at
19 artificially high and non-competitive levels

20 (f) Whether, and to what extent, Defendants' conduct caused injury to
21 Plaintiff and members of the Classes, and, if so, the appropriate measure of
22 damages; and

23 (g) Whether Plaintiff and the Nationwide Class are entitled to injunctive
24 relief.

25 34. Plaintiff's claims are typical of the claims of the members of the
26 Classes.

27 35. Plaintiff will fairly and adequately assert and protect the interests of
28 the Classes. Plaintiff's interests are coincident with, and not antagonistic to, those

1 of the other members of the Classes.

2 36. Plaintiff is represented by counsel competent and experience in the
3 prosecution of antitrust and class action litigation.

4 37. The questions of law and fact common to the members of the Classes
5 predominate over any questions affecting only individual members.

6 38. A class action is superior to other available methods for the fair and
7 efficient adjudication of this controversy because:

8 (a) The prosecution of separate actions by individual members of the
9 Classes would create a risk of inconsistent or varying adjudications, establishing
10 incompatible standards of conduct for Defendants.

11 (b) The Classes are readily ascertainable.

12 (c) Prosecution as a class action will eliminate the possibility of repetitious
13 litigation.

14 (d) Treatment as a class action will permit a large number of similarly
15 situated persons to adjudicate their common claims in a single forum
16 simultaneously, efficiently, and without the duplication of effort and expense that
17 numerous individual actions would require.

18 (e) Class treatment will permit the adjudication of relatively small claims
19 by many Class members who otherwise could not afford to litigate an antitrust
20 claim such as is asserted in this complaint on an individual basis.

21 39. This class action presents no difficulties of management that would
22 preclude its maintenance as a class action.

23
24 **COUNT I**

25 **Violation of Sections 1 the Sherman Act**

26 **(on behalf of Plaintiff and the Nationwide Class)**

27 40. Plaintiff incorporates by reference the preceding paragraphs as if fully
28 set forth herein.

1 41. Defendants and unnamed conspirators entered into and engaged in a
2 contract, combination, or conspiracy in unreasonable restraint of trade in violation of
3 Section 1 of the Sherman Act (15 U.S.C. § 1).

4 42. The acts done by each of the Defendants as part of, and in furtherance of,
5 their contract, combination, or conspiracy were authorized, ordered, or done by their
6 officers, agents, employees, or representatives while actively engaged in the
7 management of Defendants' affairs.

8 43. At least as early as July 24, 2011, and continuing through at least the
9 present, the exact dates being unknown to Plaintiff, Defendants entered into a
10 continuing agreement, understanding, and conspiracy in restraint of trade to fix,
11 raise, maintain, and/or stabilize at artificial and non-competitive levels the prices of
12 PSPs.

13 44. The anti-competitive acts were intentionally directed at the United
14 States market for PSPs and had a substantial and foreseeable effect on interstate
15 commerce by raising and fixing prices for PSPs throughout the United States.

16 45. The conspiratorial acts and combinations have caused unreasonable
17 restraints in the market for PSPs.

18 46. As a result of Defendants' unlawful conduct, Plaintiff and other
19 similarly situated members of the Nationwide Class who purchased PSPs
20 manufactured by Defendants have been harmed by being forced to pay inflated,
21 supra-competitive prices for such products.

22 47. In formulating and effectuating their contract, combination, or
23 conspiracy, Defendants engaged in anticompetitive activities, the purpose and
24 effect of which were to artificially fix, raise, maintain, and/or stabilize the price of
25 PSPs.

26 48. The illegal combination and conspiracy alleged herein had the
27 following effects, among others:

28 (a) The prices charged by Defendants for PSPs were fixed, raised,

1 maintained and/or stabilized at artificially high and non-competitive levels;

2 (b) Plaintiff and other similarly situated members of the Nationwide Class
3 have been deprived of free and open competition in the purchase of PSPs;

4 (c) Plaintiff and other similarly situated members of the Nationwide Class
5 have been required to pay more for PSPs than they would have paid in a
6 competitive marketplace absent Defendants' price-fixing conspiracy;

7 (d) Competition in the sale of PSPs has been restrained, suppressed, or
8 eliminated.

9 49. Plaintiff and members of the Nationwide Class have been injured and
10 will continue to be injured in their business and property by paying more for PSPs
11 than they would have paid and will pay in the absence of the conspiracy.

12 50. The alleged contract, combination, or conspiracy is *a per se* violation of
13 the federal antitrust laws.

14 51. Plaintiff and members of the Nationwide Class will be at the mercy of
15 Defendants' unlawful conduct until the Court orders an injunction.

16 52. Under 15 U.S.C. § 26, Plaintiff and members of the Nationwide Class
17 are entitled to an injunction against Defendants, preventing and restraining the
18 violations alleged herein.

19 COUNT II

20 Violation of State Antitrust Statutes

21 (on behalf of Plaintiff and the Damages Class)

22 53. Plaintiff incorporates by reference the preceding paragraphs as if fully
23 set forth herein.

24 54. At least as early as July 24, 2011, and continuing through at least the
25 present, the exact dates being unknown to Plaintiff, Defendants entered into a
26 continuing agreement, understanding, and conspiracy in restraint of trade to fix,
27 raise, maintain, and/or stabilize at artificial and non-competitive levels the prices of
28

1 such PSPs.

2 55. The contract, combination, or conspiracy consisted of an agreement
 3 among the Defendants to fix, raise, inflate, stabilize, and/or maintain artificially
 4 supra-competitive prices for PSPs.

5 56. In formulating and effectuating this conspiracy, Defendants performed
 6 acts in furtherance of the combination and conspiracy, including participating in
 7 meetings and conversations among themselves during which they agreed to price
 8 PSPs at certain levels and otherwise to fix, increase, inflate, maintain, and/or
 9 stabilize effective prices paid by Plaintiff and members of the Damages Class with
 10 respect to PSPs sold in the United States.

11 57. Defendants engaged in the actions described above for the purpose of
 12 carrying out their unlawful agreements to fix, raise, maintain, and/or stabilize
 13 prices of PSPs.

14 58. Defendants' anticompetitive, unfair acts described above were knowing
 15 and willful, and constituted violations or flagrant violations of the below-listed
 16 state antitrust statutes.

17 59. Defendants have entered into an unlawful agreement in restraint of
 18 trade in violation of the Arizona Revised Statutes, §§ 44-1401, *et seq.*

19 (a) Defendants' combinations or conspiracies had the following effects:
 20 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 21 Arizona; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 22 artificially high levels throughout Arizona; (3) Plaintiff and members of the
 23 Damages Class were deprived of free and open competition; and (4) Plaintiff and
 24 members of the Damages Class paid supracompetitive, artificially inflated prices
 25 for PSPs.

26 (b) During the Class Period, Defendants' illegal conduct substantially
 27 affected Arizona commerce.

28 (c) As a direct and proximate result of Defendants' unlawful conduct,

1 Plaintiff and members of the Class have been injured in their business and property
2 and are threatened with further injury.

3 (d) By reason of the foregoing, Defendants entered into agreements in
4 restraint of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.* Accordingly,
5 Plaintiff and members of the Damages Class seek all forms of relief available
6 under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

7 60. Defendants have entered into an unlawful agreement in restraint of
8 trade in violation of the California Business and Professions Code, §§ 16700, *et*
9 *seq.*

10 (a) During the Class Period, Defendants entered into and engaged in a
11 continuing unlawful trust in restraint of the trade and commerce described above in
12 violation of Section 16720 of the California Business and Professions Code.
13 Defendants, each of them, have acted in violation of Section 16720 to fix, raise,
14 stabilize, and/or maintain PSP prices at supracompetitive levels.

15 (b) The aforesaid violations of Section 16720, California Business and
16 Professions Code, consisted, without limitation, of a continuing unlawful trust and
17 concert of action among the Defendants, the substantial terms of which were to fix,
18 raise, maintain, and/or stabilize the prices of PSPs.

19 (c) For the purpose of forming and effectuating the unlawful trust, the
20 Defendants have done those things which they combined and conspired to do,
21 including but in no way limited to the acts, practices, and course of conduct set
22 forth above.

23 (d) The combination and conspiracy alleged herein has had, *inter alia*, the
24 following effects upon the commerce of California: (1) Price competition in the
25 sale of PSPs has been restrained, suppressed, and/or eliminated in the State of
26 California; (2) Prices for PSPs sold by Defendants have been fixed, raised,
27 stabilized, and pegged at artificially high, non-competitive levels in the State of
28 California and throughout the United States; and (3) Those who purchased PSPs

1 from entities who purchased PSPs directly from Defendants have been deprived of
 2 the benefit of free and open competition.

3 (e) As a direct and proximate result of Defendants' unlawful conduct,
 4 Plaintiff and members of the Damages Class have been injured in their business
 5 and property in that they paid more for PSPs than they otherwise would have paid
 6 in the absence of Defendants' unlawful conduct. As a result of Defendants'
 7 violation of Section 16720 of the California Business and Professions Code,
 8 Plaintiff and members of the Damages Class seek treble damages and their cost of
 9 suit, including a reasonable attorney's fee, pursuant to Section 16750(a) of the
 10 California Business and Professions Code.

11 61. Defendants have entered into an unlawful agreement in restraint of
 12 trade in violation of the District of Columbia Code Annotated §§ 28-4501, *et seq.*

13 (a) Defendants' combinations or conspiracies had the following effects: (1)
 14 PSP price competition was restrained, suppressed, and eliminated throughout the
 15 District of Columbia; (2) PSP prices were raised, fixed, maintained, and/or
 16 stabilized at artificially high levels throughout the District of Columbia; (3)
 17 Plaintiff and members of the Damages Class who resided in the District of
 18 Columbia and/or purchased PSPs in the District of Columbia were deprived of free
 19 and open competition in the District of Columbia; and (4) Plaintiff and members of
 20 the Damages Class who resided in the District of Columbia and/or purchased PSPs
 21 in the District of Columbia paid supracompetitive, artificially inflated prices for
 22 PSPs in the District of Columbia.

23 (b) During the Class Period, Defendants' illegal conduct substantially
 24 affected District of Columbia commerce.

25 (c) As a direct and proximate result of Defendants' unlawful conduct,
 26 Plaintiff and members of the Damages Class have been injured in their business
 27 and property and are threatened with further injury.

28 (d) By reason of the foregoing, Defendants have entered into agreements in

1 restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et*
 2 *seq.* Accordingly, Plaintiff and members of the Damages Class seek all forms of
 3 relief available under District of Columbia Code Ann. §§ 28-45601, *et seq.*

4 62. Defendants have entered into an unlawful agreement in restraint of
 5 trade in violation of the Illinois Antitrust Act, 740 Illinois Compiled Statutes, 10/1,
 6 *et seq.*

7 (a) Defendants' combinations or conspiracies had the following effects:
 8 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 9 Illinois; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 10 artificially high levels throughout Illinois; (3) Plaintiff and members of the
 11 Damages Class were deprived of free and open competition; and (4) Plaintiff and
 12 members of the Damages Class paid suprareactive, artificially inflated prices
 13 for PSPs.

14 (b) During the Class Period, Defendants' illegal conduct substantially
 15 affected Illinois commerce.

16 (c) As a direct and proximate result of Defendants' unlawful conduct,
 17 Plaintiff and members of the Damages Class have been injured in their business
 18 and property and are threatened with further injury.

19 (d) By reason of the foregoing, Defendants have entered into agreements in
 20 restraint of trade in violation of 740 Illinois Compiled Statutes 10/1 *et seq.*
 21 Accordingly, Plaintiff and members of the Damages Class seek all forms of relief
 22 available under 740 Illinois Compiled Statutes 10/1, *et seq.*

23 63. Defendants have entered into an unlawful agreement in restraint of
 24 trade in violation of the Iowa Code §§ 553.1, *et seq.*

25 (a) Defendants' combinations or conspiracies had the following effects:
 26 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 27 Iowa; (2) PSP prices were raised, fixed, maintained, and/or stabilized at artificially
 28 high levels throughout Iowa; (3) Plaintiff and members of the Damages Class were

1 deprived of free and open competition; and (4) Plaintiff and members of the
2 Damages Class paid supracompetitive, artificially inflated prices for PSPs.

3 (b) During the Class Period, Defendants' illegal conduct substantially
4 affected Iowa commerce.

5 (c) As a direct and proximate result of Defendants' unlawful conduct,
6 Plaintiff and members of the Damages Class have been injured in their business
7 and property and are threatened with further injury.

8 (d) By reason of the foregoing, Defendants have entered into agreements in
9 restraint of trade in violation of Iowa Code §§ 553.1, *et seq.* Accordingly, Plaintiff
10 and members of the Damages Class seek all forms of relief available under Iowa
11 Code §§ 553.1, *et seq.*

12 64. Defendants have entered into an unlawful agreement in restraint of
13 trade in violation of the Kansas Statutes Annotated, §§ 50-101, *et seq.*

14 (a) Defendants' combinations or conspiracies had the following effects: (1)
15 PSP price competition was restrained, suppressed, and eliminated throughout
16 Kansas; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
17 artificially high levels throughout Kansas; (3) Plaintiff and members of the
18 Damages Class were deprived of free and open competition; and (4) Plaintiff and
19 members of the Damages Class paid supracompetitive, artificially inflated prices
20 for PSPs.

21 (b) During the Class Period, Defendants' illegal conduct substantially
22 affected Kansas commerce.

23 (c) As a direct and proximate result of Defendants' unlawful conduct,
24 Plaintiff and members of the Damages Class have been injured in their business
25 and property and are threatened with further injury.

26 (d) By reason of the foregoing, Defendants have entered into agreements in
27 restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq.* Accordingly,
28 Plaintiff and members of the Damages Class seek all forms of relief available

1 under Kansas Stat. Ann. §§ 50-101, *et seq.*

2 65. Defendants have entered into an unlawful agreement in restraint of
 3 trade in violation of the Maine Revised Statutes, Maine Rev. Stat. Ann. 10, §§
 4 1101, *et seq.*

5 (a) Defendants' combinations or conspiracies had the following effects:
 6 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 7 Maine; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 8 artificially high levels throughout Maine; (3) Plaintiff and members of the
 9 Damages Class were deprived of free and open competition; and (4) Plaintiff and
 10 members of the Damages Class paid suprareactive, artificially inflated prices
 11 for PSPs.

12 (b) During the Class Period, Defendants' illegal conduct substantially
 13 affected Maine commerce.

14 (c) As a direct and proximate result of Defendants' unlawful conduct,
 15 Plaintiff and members of the Damages Class have been injured in their business
 16 and property and are threatened with further injury.

17 (d) By reason of the foregoing, Defendants have entered into agreements in
 18 restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*
 19 Accordingly, Plaintiff and members of the Damages Class seek all relief available
 20 under Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

21 66. Defendants have entered into an unlawful agreement in restraint of
 22 trade in violation of the Michigan Compiled Laws Annotated §§ 445.771, *et seq.*

23 (a) Defendants' combinations or conspiracies had the following effects:
 24 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 25 Michigan; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 26 artificially high levels throughout Michigan; (3) Plaintiff and members of the
 27 Damages Class were deprived of free and open competition; and (4) Plaintiff and
 28 members of the Damages Class paid suprareactive, artificially inflated prices

1 for PSPs.

2 (b) During the Class Period, Defendants' illegal conduct substantially
3 affected Michigan commerce.

4 (c) As a direct and proximate result of Defendants' unlawful conduct,
5 Plaintiff and members of the Damages Class have been injured in their business
6 and property and are threatened with further injury.

7 (d) By reason of the foregoing, Defendants have entered into agreements in
8 restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq.*
9 Accordingly, Plaintiff and members of the Damages Class seek all relief available
10 under Michigan Comp. Laws Ann. §§ 445.771, *et seq.*

11 67. Defendants have entered into an unlawful agreement in restraint of
12 trade in violation of the Minnesota Annotated Statutes §§ 325D.49, *et seq.*

13 (a) Defendants' combinations or conspiracies had the following effects:
14 (1) PSP price competition was restrained, suppressed, and eliminated throughout
15 Minnesota; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
16 artificially high levels throughout Minnesota; (3) Plaintiff and members of the
17 Damages Class were deprived of free and open competition; and (4) Plaintiff and
18 members of the Damages Class paid supracompetitive, artificially inflated prices
19 for PSPs.

20 (b) During the Class Period, Defendants' illegal conduct substantially
21 affected Minnesota commerce.

22 (c) As a direct and proximate result of Defendants' unlawful conduct,
23 Plaintiff and members of the Damages Class have been injured in their business
24 and property and are threatened with further injury.

25 (d) By reason of the foregoing, Defendants have entered into agreements in
26 restraint of trade in violation of Minnesota Stat. §§ 325D.49, *et seq.* Accordingly,
27 Plaintiff and members of the Damages Class seek all relief available under
28 Minnesota Stat. §§ 325D.49, *et seq.*

1 68. Defendants have entered into an unlawful agreement in restraint of
 2 trade in violation of the Mississippi Code Annotated §§ 75-21-1, *et seq.*

3 (a) Defendants' combinations or conspiracies had the following effects: (1)
 4 PSP price competition was restrained, suppressed, and eliminated throughout
 5 Mississippi; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 6 artificially high levels throughout Mississippi; (3) Plaintiff and members of the
 7 Damages Class who resided in Mississippi and/or purchased PSPs in Mississippi
 8 were deprived of free and open competition in Mississippi; and (4) Plaintiff and
 9 members of the Damages Class who resided in Mississippi and/or purchased PSPs
 10 in Mississippi paid supracompetitive, artificially inflated prices in Mississippi for
 11 PSPs.

12 (b) During the Class Period, Defendants' illegal conduct substantially
 13 affected Mississippi commerce.

14 (c) As a direct and proximate result of Defendants' unlawful conduct,
 15 Plaintiff and members of the Damages Class have been injured in their business
 16 and property and are threatened with further injury.

17 (d) By reason of the foregoing, Defendants have entered into agreements in
 18 restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq.*
 19 Accordingly, Plaintiff and members of the Damages Class seek all relief available
 20 under Mississippi Code Ann. § 75-21-1, *et seq.*

21 69. Defendants have entered into an unlawful agreement in restraint of
 22 trade in violation of the Nebraska Revised Statutes §§ 59-801, *et seq.*

23 (a) Defendants' combinations or conspiracies had the following effects: (1)
 24 PSP price competition was restrained, suppressed, and eliminated throughout
 25 Nebraska; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 26 artificially high levels throughout Nebraska; (3) Plaintiff and members of the
 27 Damages Class were deprived of free and open competition; and (4) Plaintiff and
 28 members of the Damages Class paid supracompetitive, artificially inflated prices

1 for PSPs.

2 (b) During the Class Period, Defendants' illegal conduct substantially
3 affected Nebraska commerce.

4 (c) As a direct and proximate result of Defendants' unlawful conduct,
5 Plaintiff and members of the Damages Class have been injured in their business
6 and property and are threatened with further injury.

7 (d) By reason of the foregoing, Defendants have entered into agreements in
8 restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq.*
9 Accordingly, Plaintiff and members of the Damages Class seek all relief available
10 under Nebraska Revised Statutes §§ 59-801, *et seq.*

11 70. Defendants have entered into an unlawful agreement in restraint of
12 trade in violation of the Nevada Revised Statutes Annotated §§ 598A.010, *et seq.*

13 (a) Defendants' combinations or conspiracies had the following effects:
14 (1) PSP price competition was restrained, suppressed, and eliminated throughout
15 Nevada; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
16 artificially high levels throughout Nevada; (3) Plaintiff and members of the
17 Damages Class who resided in Nevada and/or purchased PSPs in Nevada were
18 deprived of free and open competition in Nevada; and (4) Plaintiff and members of
19 the Damages Class who resided in Nevada and/or purchased PSPs in Nevada paid
20 supracompetitive, artificially inflated prices in Nevada for PSPs.

21 (b) During the Class Period, Defendants' illegal conduct substantially
22 affected Nevada commerce.

23 (c) As a direct and proximate result of Defendants' unlawful conduct,
24 Plaintiff and members of the Damages Class have been injured in their business
25 and property and are threatened with further injury.

26 (d) By reason of the foregoing, Defendants have entered into agreements in
27 restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A.010, *et seq.*
28 Accordingly, Plaintiff and members of the Damages Class seek all relief available

1 under Nevada Rev. Stat. Ann. §§ 598A.010, *et seq.*

2 71. Defendants have entered into an unlawful agreement in restraint of
3 trade in violation of the New Hampshire Revised Statutes §§ 356:1, *et seq.*

4 (a) Defendants' combinations or conspiracies had the following effects:
5 (1) PSP price competition was restrained, suppressed, and eliminated throughout
6 New Hampshire; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
7 artificially high levels throughout New Hampshire; (3) Plaintiff and members of
8 the Damages Class were deprived of free and open competition; and (4) Plaintiff
9 and members of the Damages Class paid supracompetitive, artificially inflated
10 prices for PSPs.

11 (b) During the Class Period, Defendants' illegal conduct substantially
12 affected New Hampshire commerce.

13 (c) As a direct and proximate result of Defendants' unlawful conduct,
14 Plaintiff and members of the Damages Class have been injured in their business
15 and property and are threatened with further injury.

16 (d) By reason of the foregoing, Defendants have entered into agreements in
17 restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.*
18 Accordingly, Plaintiff and members of the Damages Class seek all relief available
19 under New Hampshire Revised Statutes §§ 356:1, *et seq.*

20 72. Defendants have entered into an unlawful agreement in restraint of
21 trade in violation of the New Mexico Statutes Annotated §§ 57-1-1, *et seq.*

22 (a) Defendants' combinations or conspiracies had the following effects:
23 (1) PSP price competition was restrained, suppressed, and eliminated throughout
24 New Mexico; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
25 artificially high levels throughout New Mexico; (3) Plaintiff and members of the
26 Damages Class were deprived of free and open competition; and (4) Plaintiff and
27 members of the Damages Class paid supracompetitive, artificially inflated prices
28 PSPs.

1 (b) During the Class Period, Defendants' illegal conduct substantially
 2 affected New Mexico commerce.

3 (c) As a direct and proximate result of Defendants' unlawful conduct,
 4 Plaintiff and members of the Damages Class have been injured in their business
 5 and property and are threatened with further injury.

6 (d) By reason of the foregoing, Defendants have entered into agreements in
 7 restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.*
 8 Accordingly, Plaintiff and members of the Damages Class seek all relief available
 9 under New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

10 73. Defendants have entered into an unlawful agreement in restraint of
 11 trade in violation of the New York General Business Laws §§ 340, *et seq.*

12 (a) Defendants' combinations or conspiracies had the following effects:
 13 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 14 New York; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 15 artificially high levels throughout New York; (3) Plaintiff and members of the
 16 Damages Class who resided in New York and/or purchased PSPs in New York
 17 were deprived of free and open competition in New York; and (4) Plaintiff and
 18 members of the Damages Class who resided in New York paid supracompetitive,
 19 artificially inflated prices for PSPs when they purchased PSPs in New York, or
 20 purchased in New York PSPs that were otherwise of lower quality than would have
 21 been absent the conspirators' illegal acts, or were unable to purchase PSPs that
 22 they would have otherwise purchased absent the illegal conduct.

23 (b) During the Class Period, Defendants' illegal conduct substantially
 24 affected New York commerce.

25 (c) As a direct and proximate result of Defendants' unlawful conduct,
 26 Plaintiff and members of the Damages Class have been injured in their business
 27 and property and are threatened with further injury.

28 (d) By reason of the foregoing, Defendants have entered into agreements in

1 restraint of trade in violation of the New York Donnelly Act, §§ 340, *et seq.* The
 2 conduct set forth above is a per se violation of the Act. Accordingly, Plaintiff and
 3 members of the Damages Class seek all relief available under New York Gen. Bus.
 4 Law §§ 340, *et seq.*

5 74. Defendants have entered into an unlawful agreement in restraint of
 6 trade in violation of the North Carolina General Statutes §§ 75-1, *et seq.*

7 (a) Defendants' combinations or conspiracies had the following effects:
 8 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 9 North Carolina; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 10 artificially high levels throughout North Carolina; (3) Plaintiff and members of the
 11 Damages Class who resided in North Carolina and/or purchased PSPs in North
 12 Carolina were deprived of free and open competition in North Carolina; and (4)
 13 Plaintiff and members of the Damages Class who resided in North Carolina and/or
 14 purchased PSPs in North Carolina paid supracompetitive, artificially inflated prices
 15 in North Carolina for PSPs.

16 (b) During the Class Period, Defendants' illegal conduct substantially
 17 affected North Carolina commerce. As a direct and proximate result of
 18 Defendants' unlawful conduct, Plaintiff and members of the Damages Class have
 19 been injured in their business and property and are threatened with further injury.

20 (c) By reason of the foregoing, Defendants have entered into agreements
 21 in restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq.*
 22 Accordingly, Plaintiff and members of the Damages Class seek all relief available
 23 under North Carolina Gen. Stat. §§ 75-1, *et seq.*

24 75. Defendants have entered into an unlawful agreement in restraint of
 25 trade in violation of the North Dakota Century Code §§ 51-08.1-01, *et seq.*

26 (a) Defendants' combinations or conspiracies had the following effects:
 27 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 28 North Dakota; (2) PSP prices were raised, fixed, maintained, and/or stabilized at

1 artificially high levels throughout North Dakota; (3) Plaintiff and members of the
2 Damages Class were deprived of free and open competition; and (4) Plaintiff and
3 members of the Damages Class paid supracompetitive, artificially inflated prices
4 for PSPs.

5 (b) During the Class Period, Defendants' illegal conduct had a substantial
6 effect on North Dakota commerce.

7 (c) As a direct and proximate result of Defendants' unlawful conduct,
8 Plaintiff and members of the Damages Class have been injured in their business
9 and property and are threatened with further injury.

10 (d) By reason of the foregoing, Defendants have entered into agreements in
11 restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq.*
12 Accordingly, Plaintiff and members of the Damages Class seek all relief available
13 under North Dakota Cent. Code §§ 51-08.1-01, *et seq.*

14 76. Defendants have entered into an unlawful agreement in restraint of
15 trade in violation of the Oregon Revised Statutes §§ 646.705, *et seq.*

16 (a) Defendants' combinations or conspiracies had the following effects:
17 (1) PSP price competition was restrained, suppressed, and eliminated throughout
18 Oregon; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
19 artificially high levels throughout Oregon; (3) Plaintiff and members of the
20 Damages Class were deprived of free and open competition; and (4) Plaintiff and
21 members of the Damages Class paid supracompetitive, artificially inflated prices
22 for PSPs.

23 (b) During the Class Period, Defendants' illegal conduct had a substantial
24 effect on Oregon commerce.

25 (c) As a direct and proximate result of Defendants' unlawful conduct,
26 Plaintiff and members of the Damages Class have been injured in their business
27 and property and are threatened with further injury.

28 (d) By reason of the foregoing, Defendants have entered into agreements in

1 restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq.*
 2 Accordingly, Plaintiff and members of the Damages Class seek all relief available
 3 under Oregon Revised Statutes §§ 646.705, *et seq.*

4 77. Defendants have entered into an unlawful agreement in restraint of
 5 trade in violation of the Rhode Island General Laws §§ 6-36-4, *et seq.*

6 (a) Defendants' combinations or conspiracies had the following effects: (1)
 7 PSP price competition was restrained, suppressed, and eliminated throughout
 8 Rhode Island; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 9 artificially high levels throughout Rhode Island; (3) Plaintiff and members of the
 10 Damages Class were deprived of free and open competition; and (4) Plaintiff and
 11 members of the Damages Class paid supracompetitive, artificially inflated prices
 12 for PSPs.

13 (b) During the Class Period, Defendants' illegal conduct had a substantial
 14 effect on Rhode Island commerce.

15 (c) As a direct and proximate result of Defendants' unlawful conduct,
 16 Plaintiff and members of the Damages Class have been injured in their business
 17 and property and are threatened with further injury.

18 78. By reason of the foregoing, Defendants have entered into agreements in
 19 restraint of trade in violation of Rhode Island General Laws §§ 6-36-4, *et seq.*
 20 Accordingly, Plaintiff and members of the Damages Class seek all relief available
 21 under Rhode Island General Laws §§ 6-36-4, *et seq.*

22 79. Defendants have entered into an unlawful agreement in restraint of
 23 trade in violation of the South Dakota Codified Laws §§ 37-1-3.1., *et seq.*

24 (a) Defendants' combinations or conspiracies had the following effects:
 25 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 26 South Dakota; (2) PPSP prices were raised, fixed, maintained, and/or stabilized at
 27 artificially high levels throughout South Dakota; (3) Plaintiff and members of the
 28 Damages Class who resided in South Dakota and/or purchased PSPs in South

1 Dakota were deprived of free and open competition in South Dakota; and (4)
2 Plaintiff and members of the Damages Class who resided in South Dakota and/or
3 purchased PSPs in South Dakota paid supracompetitive, artificially inflated prices
4 in South Dakota for PSPs.

5 (b) During the Class Period, Defendants' illegal conduct has a substantial
6 effect on South Dakota commerce.

7 (c) As a direct and proximate result of Defendants' unlawful conduct,
8 Plaintiff and members of the Damages Class have been injured in their business
9 and property and are threatened with further injury.

10 (d) By reason of the foregoing, Defendants have entered into agreements in
11 restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq.*
12 Accordingly, Plaintiff and members of the Damages Class seek all relief available
13 under South Dakota Codified Laws Ann. §§ 37-1, *et seq.*

14 80. Defendants have entered into an unlawful agreement in restraint of
15 trade in violation of the Tennessee Code Annotated §§ 47-25-101, *et seq.*

16 (a) Defendants' combinations or conspiracies had the following effects:
17 (1) PSP price competition was restrained, suppressed, and eliminated throughout
18 Tennessee; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
19 artificially high levels throughout Tennessee; (3) Plaintiff and members of the
20 Damages Class who resided in Tennessee and/or purchased PSPs in Tennessee
21 were deprived of free and open competition in Tennessee; and (4) Plaintiff and
22 members of the Damages Class who resided in Tennessee and/or purchased PSPs
23 in Tennessee paid supracompetitive, artificially inflated prices in Tennessee for
24 PSPs.

25 (b) During the Class Period, Defendants' illegal conduct had a substantial
26 effect on Tennessee commerce. As a direct and proximate result of Defendants'
27 unlawful conduct, Plaintiff and members of the Damages Class have been injured
28 in their business and property and are threatened with further injury.

1 (c) By reason of the foregoing, Defendants have entered into agreements
 2 in restraint of trade in violation of Tennessee Code Ann. §§ 47-25-101, *et seq.*
 3 Accordingly, Plaintiff and members of the Damages Class seek all relief available
 4 under Tennessee Code Ann. §§ 47-25-101, *et seq.*

5 81. Defendants have entered into an unlawful agreement in restraint of
 6 trade in violation of the Utah Code Annotated §§ 76-10-911, *et seq.*

7 (a) Defendants' combinations or conspiracies had the following effects:
 8 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 9 Utah; (2) PSP prices were raised, fixed, maintained, and/or stabilized at artificially
 10 high levels throughout Utah; (3) Plaintiff and members of the Damages Class were
 11 deprived of free and open competition; and (4) Plaintiff and members of the
 12 Damages Class paid supracompetitive, artificially inflated prices for PSPs.

13 (b) During the Class Period, Defendants' illegal conduct had a substantial
 14 effect on Utah commerce.

15 (c) As a direct and proximate result of Defendants' unlawful conduct,
 16 Plaintiff and members of the Damages Class have been injured in their business
 17 and property and are threatened with further injury.

18 (d) By reason of the foregoing, Defendants have entered into agreements in
 19 restraint of trade in violation of Utah Code Annotated §§ 76-10-911, *et seq.*
 20 Accordingly, Plaintiff and members of the Damages Class seek all relief available
 21 under Utah Code Annotated §§ 76-10-911, *et seq.*

22 82. Defendants have entered into an unlawful agreement in restraint of
 23 trade in violation of the Vermont Stat. Ann. 9 §§ 2451, *et seq.*

24 (a) Defendants' combinations or conspiracies had the following effects:
 25 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 26 Vermont; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 27 artificially high levels throughout Vermont; (3) Plaintiff and members of the
 28 Damages Class were deprived of free and open competition; and (4) Plaintiff and

1 members of the Damages Class paid supracompetitive, artificially inflated prices
2 for PSPs.

3 (b) During the Class Period, Defendants' illegal conduct had a substantial
4 effect on Vermont commerce.

5 (c) As a direct and proximate result of Defendants' unlawful conduct,
6 Plaintiff and members of the Damages Class have been injured in their business
7 and property and are threatened with further injury.

8 (d) By reason of the foregoing, Defendants have entered into agreements in
9 restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2451, *et seq.* Plaintiff is
10 entitled to relief pursuant to Vermont Stat. Ann. 9 § 2465 and any other applicable
11 authority. Accordingly, Plaintiff and members of the Damages Class seek relief
12 available under Vermont Stat. Ann. 9 §§ 2451, *et seq.*

13 83. Defendants have entered into an unlawful agreement in restraint of
14 trade in violation of the West Virginia Code §§ 47-18-1, *et seq.*

15 (a) Defendants' combinations or conspiracies had the following effects:
16 (1) PSP price competition was restrained, suppressed, and eliminated throughout
17 West Virginia; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
18 artificially high levels throughout West Virginia; (3) Plaintiff and members of the
19 Damages Class who resided in West Virginia and/or purchased PSPs in West
20 Virginia were deprived of free and open competition in West Virginia; and (4)
21 Plaintiff and members of the Damages Class who resided in West Virginia and/or
22 purchased PSPs in West Virginia paid supracompetitive, artificially inflated prices
23 in West Virginia for PSPs.

24 (b) During the Class Period, Defendants' illegal conduct had a substantial
25 effect on West Virginia commerce.

26 (c) As a direct and proximate result of Defendants' unlawful conduct,
27 Plaintiff and members of the Damages Class have been injured in their business
28 and property and are threatened with further injury.

1 (d) By reason of the foregoing, Defendants have entered into agreements in
 2 restraint of trade in violation of West Virginia Code §§ 47-18-1, *et seq.*
 3 Accordingly, Plaintiff and members of the Damages Class seek all relief available
 4 under West Virginia Code §§ 47-18-1, *et seq.*

5 84. Defendants have entered into an unlawful agreement in restraint of
 6 trade in violation of the Wisconsin Statutes §§ 133.01, *et seq.*

7 (a) Defendants' combinations or conspiracies had the following effects:
 8 (1) PSP price competition was restrained, suppressed, and eliminated throughout
 9 Wisconsin; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 10 artificially high levels throughout Wisconsin; (3) Plaintiff and members of the
 11 Damages Class were deprived of free and open competition; and (4) Plaintiff and
 12 members of the Damages Class paid suprareactive, artificially inflated prices
 13 for PSPs.

14 (b) During the Class Period, Defendants' illegal conduct had a substantial
 15 effect on Wisconsin commerce.

16 (c) As a direct and proximate result of Defendants' unlawful conduct,
 17 Plaintiff and members of the Damages Class have been injured in their business
 18 and property and are threatened with further injury.

19 (d) By reason of the foregoing, Defendants have entered into agreements in
 20 restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq.* Accordingly,
 21 Plaintiff and members of the Damages Class seek all relief available under
 22 Wisconsin Stat. §§ 133.01, *et seq.*

23 85. Plaintiff and members of the Damages Class have been injured in their
 24 business and property by reason of Defendants' unlawful combination, contract,
 25 conspiracy, and agreement. Plaintiff and members of the Damages Class have paid
 26 more for PSPs than they otherwise would have paid in the absence of Defendants'
 27 unlawful conduct. This injury is of the type the antitrust laws of the above states
 28 were designed to prevent and flows from Defendants' unlawful conduct.

1 86. In addition, Defendants have profited significantly from the aforesaid
 2 conspiracy. Defendants' profits derived from their anticompetitive conduct come at
 3 the expense and detriment of Plaintiff and members of the Damages Class.

4 87. Accordingly, Plaintiff and the members of the Damages Class seek
 5 damages (including statutory damages where applicable), to be trebled or otherwise
 6 increased as permitted by a particular jurisdiction's antitrust law, and costs of suit,
 7 including reasonable attorneys' fees, to the extent permitted by the above state laws.

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12 **COUNT III**

13 **Violation of State Consumer Protection Statutes** 14 **(on behalf of Plaintiff and the Damages Class)**

15 88. Plaintiff incorporates by reference the allegations in the preceding
 16 paragraphs.

17 89. Defendants knowingly engaged in unlawful, unfair competition or
 18 unfair, unconscionable, deceptive, or fraudulent acts or practices in violation of the
 19 state consumer protection and unfair competition statutes listed below.

20 90. Defendants have knowingly entered into an unlawful agreement in
 21 restraint of trade in violation of the Arkansas Code Annotated, § 4-88-101.

22 (a) Defendants knowingly agreed to, and did in fact, act in restraint of trade
 23 or commerce by affecting, fixing, controlling, and/or maintaining at non-
 24 competitive and artificially inflated levels the prices at which PSPs were sold,
 25 distributed, or obtained in Arkansas and took efforts to conceal their agreements
 26 from Plaintiff and members of the Damages Class.

27 (b) The aforementioned conduct on the part of the Defendants constituted
 28 "unconscionable" and "deceptive" acts or practices in violation of Arkansas Code

1 Annotated § 4-88-107(a)(10).

2 (c) Defendants' unlawful conduct had the following effects: (1) PSP price
3 competition was restrained, suppressed, and eliminated throughout Arkansas; (2)
4 PSP prices were raised, fixed, maintained, and/or stabilized at artificially high
5 levels throughout Arkansas; (3) Plaintiff and members of the Damages Class were
6 deprived of free and open competition; and (4) Plaintiff and members of the
7 Damages Class paid supracompetitive, artificially inflated prices for PSPs.

8 (d) During the Class Period, Defendants' illegal conduct substantially
9 affected Arkansas commerce and consumers.

10 (e) As a direct and proximate result of the unlawful conduct of the
11 Defendants, Plaintiff and the members of the Damages Class have been injured in
12 their business and property and are threatened with further injury.

13 (f) Defendants have engaged in unfair competition or unfair or deceptive
14 acts or practices in violation of Arkansas Code Annotated § 4-88-107(a)(10) and,
15 accordingly, Plaintiff and the members of the Damages Class seek all relief
16 available under that statute.

17 91. Defendants have engaged in unfair competition or unfair,
18 unconscionable, deceptive or fraudulent acts or practices in violation of California
19 Business and Professions Code § 17200, *et seq.*

20 (a) During the Class Period, Defendants committed and continue to commit
21 acts of unfair competition, as defined by Sections 17200, *et seq.* of the California
22 Business and Professions Code, by engaging in the acts and practices specified
23 above.

24 (b) During the Class Period, Defendants illegal conduct substantially
25 affected California commerce and consumers.

26 (c) This claim is instituted pursuant to Sections 17203 and 17204 of the
27 California Business and Professions Code, to obtain restitution from these
28 Defendants for acts, as alleged in this Class Action Complaint, that violated

1 Section 17200 of the California Business and Professions Code, commonly known
2 as the Unfair Competition Law.

3 (d) The Defendants' conduct as alleged in this Class Action Complaint
4 violated Section 17200. The acts, omissions, misrepresentations, practices, and
5 non-disclosures of Defendants, as alleged herein, constituted a common,
6 continuous, and continuing course of conduct of unfair competition by means of
7 unfair, unlawful, and/or fraudulent business acts or practices within the meaning of
8 California Business and Professions Code, Section 17200, *et seq.*, including, but
9 not limited to, the violations of Section 16720, *et seq.*, of the California Business
10 and Professions Code, as set forth above;

11 (e) Defendants' acts, omissions, misrepresentations, practices, and
12 nondisclosures, as described above, whether or not in violation of Section 16720,
13 *et seq.*, of the California Business and Professions Code, and whether or not
14 concerted or independent acts, are otherwise unfair, unconscionable, unlawful, or
15 fraudulent;

16 (f) Defendants' acts or practices are unfair to purchasers of PSPs in the
17 State of California within the meaning of Section 17200, California Business and
18 Professions Code; and

19 (g) Defendants' unlawful conduct had the following effects: (1) PSP price
20 competition was restrained, suppressed, and eliminated throughout California; (2)
21 PSP prices were raised, fixed, maintained, and/or stabilized at artificially high
22 levels throughout California; (3) Plaintiff and members of the classes who resided
23 in California and/or purchased PSPs in California were deprived of free and open
24 competition in California; and (4) Plaintiff and members of the classes who resided
25 in California and/or purchased PSPs in California paid supracompetitive,
26 artificially inflated prices in California for PSPs.

27 (h) Defendants' acts and practices are unlawful, fraudulent, or deceptive
28 within the meaning of Section 17200 of the California Business and Professions

1 Code.

2 (i) Plaintiff and members of the classes are entitled to full restitution
3 and/or disgorgement of all revenues, earnings, profits, compensation, and benefits
4 that may have been obtained by Defendants as a result of such business acts or
5 practices.

6 (j) The illegal conduct alleged herein is continuing and there is no
7 indication that Defendants will not continue such activity into the future.

8 (k) The unlawful, fraudulent, deceptive, and unfair business practices of
9 Defendants, and each of them, as described above, have caused and continue to
10 cause Plaintiff and the members of the classes to pay supracompetitive and
11 artificially inflated prices for PSPs. Plaintiff and the members of the classes
12 suffered injury in fact and lost money or property as a result of such unfair
13 competition.

14 (l) The conduct of Defendants as alleged in this Class Action Complaint
15 violates Section 17200 of the California Business and Professions Code.

16 (m) As alleged in this Class Action Complaint, Defendants have been
17 unjustly enriched as a result of their wrongful conduct and by Defendants' unfair
18 competition. Plaintiff and the members of the Damages Class are accordingly
19 entitled to equitable relief including restitution and/or disgorgement of all
20 revenues, earnings, profits, compensation, and benefits that may have been
21 obtained by Defendants as a result of such business practices, pursuant to the
22 California Business and Professions Code, Sections 17203 and 17204.

23 92. Defendants have engaged in unfair competition or unlawful, unfair,
24 unconscionable, or deceptive acts or practices in violation of District of Columbia
25 Code § 28-3901, *et seq.*

26 (a) Defendants agreed to, and did in fact, act in restraint of trade or
27 commerce by affecting, fixing, controlling, and/or maintaining, at artificial and/or
28 non-competitive levels, the prices at which PSPs were sold, distributed, or obtained

1 in the District of Columbia.

2 (b) The foregoing conduct constituted “unlawful trade practices” within the
3 meaning of D.C. Code § 28-3904.

4 (c) During the Class Period, Defendants’ illegal conduct substantially
5 affected District of Columbia commerce and consumers.

6 (d) Defendants’ unlawful conduct had the following effects: (1) PSP price
7 competition was restrained, suppressed, and eliminated throughout the District of
8 Columbia; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
9 artificially high levels throughout the District of Columbia; (3) Plaintiff and the
10 members of the Damages Class were deprived of free and open competition; and
11 (4) Plaintiff and the members of the Damages Class paid supracompetitive,
12 artificially inflated prices for PSPs.

13 (e) As a direct and proximate result of Defendants’ conduct, Plaintiff and
14 the members of the Damages Class have been injured in their business and
15 property and are threatened with further injury. Defendants have engaged in unfair
16 competition or unfair or deceptive acts or practices in violation of District of
17 Columbia Code § 28-3901, *et seq.*, and, accordingly, Plaintiff and the members of
18 the Damages Class seek all relief available under that statute.

19 93. Defendants have engaged in unfair competition or unlawful, unfair,
20 unconscionable, or deceptive acts or practices in violation of the Florida Deceptive
21 and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*

22 (a) Defendants’ unlawful conduct had the following effects: (1) PSP price
23 competition was restrained, suppressed, and eliminated throughout Florida; (2)
24 PSP prices were raised, fixed, maintained, and/or stabilized at artificially high
25 levels throughout Florida; (3) Plaintiff and the members of the Damages Class
26 were deprived of free and open competition; and (4) Plaintiff and the members of
27 the Damages Class paid supracompetitive, artificially inflated prices for PSPs.

28 (b) During the Class Period, Defendants’ illegal conduct substantially

1 affected Florida commerce and consumers.

2 (c) As a direct and proximate result of Defendants' unlawful conduct,
3 Plaintiff and the members of the Damages Class have been injured in their business
4 and property and are threatened with further injury.

5 (d) Defendants have engaged in unfair competition or unlawful, unfair, or
6 deceptive acts or practices in violation of Florida Stat. § 501.201, *et seq.*, and,
7 accordingly, Plaintiff and the members of the Damages Class seek all relief
8 available under that statute.

9 94. Defendants have engaged in unfair competition or unlawful, unfair,
10 unconscionable, or deceptive acts or practices in violation of the Missouri
11 Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*

12 (a) Defendants engaged in the conduct described in this Class Action
13 Complaint in connection with the sale of PSPs in a market that includes Missouri.

14 (b) During the Class Period, Defendants' illegal conduct substantially
15 affected Missouri commerce and consumers.

16 (c) Defendants agreed to, and in fact did, fix, control, and maintain at
17 artificial and non-competitive levels, the price at which PSPs were sold,
18 distributed, or obtained in Missouri, which conduct constituted unfair practices in
19 that it was unlawful under federal and state law, violated public policy, was
20 unethical, oppressive, and unscrupulous, and caused substantial injury to Plaintiff
21 and the members of the Damages Class

22 (d) Defendants concealed, suppressed, and omitted to disclose material
23 facts to Plaintiff and the members of the Damages Class concerning Defendants'
24 unlawful activities and artificially inflated prices for PSPs. The concealed,
25 suppressed, and omitted facts would have been important to Plaintiff and the
26 members of the Damages Class as they related to the cost of PSPs.

27 (e) Defendants' unlawful conduct had the following effects: (1) PSP price
28 competition was restrained, suppressed, and eliminated throughout Missouri; (2)

1 PSP prices were raised, fixed, maintained, and/or stabilized at artificially high
2 levels throughout Missouri; (3) Plaintiff and the members of the Damages Class
3 were deprived of free and open competition; and (4) Plaintiff and the members of
4 the Damages Class paid supracompetitive, artificially inflated prices for PSPs.

5 (f) The foregoing acts and practices constituted unlawful practices in
6 violation of the Missouri Merchandising Practices Act.

7 (g) As a direct and proximate result of the above-described unlawful
8 practices, Plaintiff and the members of the Damages Class suffered ascertainable
9 loss of money or property.

10 (h) Accordingly, Plaintiff and the members of the Damages Class seek all
11 relief available under Missouri's Merchandising Practices Act, specifically Mo.
12 Rev. Stat. § 407.020, which prohibits "the act, use or employment by any person of
13 any deception, fraud, false pretense, false promise, misrepresentation, unfair
14 practice or the concealment, suppression, or omission of any material fact in
15 connection with the sale or advertisement of any merchandise in trade or
16 commerce," as further interpreted by the Missouri Code of State Regulations,
17 which provides for the relief sought in this Count.

18 95. Defendants have engaged in unfair competition or unfair,
19 unconscionable, or deceptive acts or practices in violation of the New Mexico Stat.
20 § 57-12-1, *et seq.*

21 (a) Defendants agreed to, and did in fact, act in restraint of trade or
22 commerce by affecting, fixing, controlling, and/or maintaining at a non-
23 competitive and artificially inflated levels, the price at which PSPs were sold,
24 distributed, or obtained in New Mexico and took efforts to conceal their
25 agreements from Plaintiff and the members of the Damages Class.

26 (b) The aforementioned conduct on the part of the Defendants constituted
27 "unconscionable trade practices" in violation of N.M.S.A. § 57-12-3, in that such
28 conduct, *inter alia*, and as set forth in N.M.S.A. § 57-12-2E, resulted in a gross

1 disparity between the value received by Plaintiff and the members of the Damages
2 Class and the prices paid by them for PSPs.

3 (c) Defendants' unlawful conduct had the following effects: (1) PSP price
4 competition was restrained, suppressed, and eliminated throughout New Mexico;
5 (2) PSP prices were raised, fixed, maintained, and/or stabilized at artificially high
6 levels throughout New Mexico; (3) Plaintiff and the members of the Damages
7 Class were deprived of free and open competition; and (4) Plaintiff and the
8 members of the Damages Class paid supracompetitive, artificially inflated prices
9 for PSPs.

10 (d) During the Class Period, Defendants' illegal conduct substantially
11 affected New Mexico commerce and consumers.

12 (e) As a direct and proximate result of the unlawful conduct of the
13 Defendants, Plaintiff and the members of the Damages Class have been injured in
14 their business and property and are threatened with further injury.

15 (f) Defendants have engaged in unfair competition or unfair or deceptive
16 acts or practices in violation of New Mexico Stat. § 57-12-1, *et seq.*, and,
17 accordingly, Plaintiff and the members of the Damages Class seek all relief
18 available under that statute.

19 96. Defendants have engaged in unfair competition or unfair,
20 unconscionable, or deceptive acts or practices in violation of N.Y. Gen. Bus. Law
21 § 349, *et seq.*

22 (a) Defendants agreed to, and did in fact, act in restraint of trade or
23 commerce by affecting, fixing, controlling, and/or maintaining, at artificial and
24 non-competitive levels, the price at which PSPs were sold, distributed, or obtained
25 in New York and took efforts to conceal their agreements from Plaintiff and the
26 members of the Damages Class.

27 (b) Defendants deceptively led purchasers, such as Plaintiff and the
28 members of the Damages Class, to believe that the PSPs they had purchased had

1 been sold at legal, competitive prices, when they had in fact been sold at a
 2 collusively obtained and inflated prices.

3 (c) The conduct of the Defendants described in this Class Action
 4 Complaint constitutes consumer-oriented deceptive acts or practices within the
 5 meaning of N.Y. Gen. Bus. Law § 349, which resulted in consumer injury and
 6 broad adverse impact on the public at large, and harmed the public interest of New
 7 York State in an honest marketplace in which economic activity is conducted in a
 8 competitive manner.

9 (d) Defendants' unlawful conduct had the following effects: (1) PSP price
 10 competition was restrained, suppressed, and eliminated throughout New York; (2)
 11 PSP prices were raised, fixed, maintained, and/or stabilized at artificially high
 12 levels throughout New York; (3) Plaintiff and the members of the Damages Class
 13 who reside in and/or made purchases of PSPs in New York were deprived of free
 14 and open competition and subject to Defendants' deceptive practices in New York;
 15 and (4) Plaintiff and the members of the Damages Class who reside in and/or made
 16 purchases of PSPs in New York paid supracompetitive, artificially inflated prices
 17 in New York for PSPs, and were subjected to Defendants' deceptive practice in
 18 New York.

19 (e) During the Class Period, Defendants' illegal conduct substantially
 20 affected New York commerce and consumers.

21 (f) During the Class Period, each of the Defendants named in this Class
 22 Action Complaint directly, or indirectly and through affiliates, dominated and
 23 controlled, manufactured, sold, and/or distributed PSPs in New York.

24 (g) Plaintiff and the members of the Damages Class seek all relief available
 25 pursuant to N.Y. Gen. Bus. Law § 349(h).

26 97. Defendants have engaged in unfair competition or unfair,
 27 unconscionable, or deceptive acts or practices in violation of North Carolina Gen.
 28 Stat. § 75-1.1, *et seq.*

1 (a) Defendants agreed to, and did in fact, act in restraint of trade or
2 commerce by affecting, fixing, controlling, and/or maintaining, at artificial and
3 non-competitive levels, the price at which PSPs were sold, distributed, or obtained
4 in North Carolina and took efforts to conceal their agreements from Plaintiff and
5 the members of the Damages Class.

6 (b) The conduct of the Defendants described in this Class Action
7 Complaint constituted consumer-oriented deceptive acts or practices within the
8 meaning of North Carolina law, which resulted in consumer injury and broad
9 adverse impact on the public at large, and harmed the public interest of North
10 Carolina consumers in an honest marketplace in which economic activity is
11 conducted in a competitive manner.

12 (c) Defendants' unlawful conduct had the following effects upon
13 purchasers in North Carolina: (1) PSP price competition was restrained,
14 suppressed, and eliminated throughout North Carolina; (2) PSP prices were raised,
15 fixed, maintained, and/or stabilized at artificially high levels throughout North
16 Carolina; (3) Plaintiff and the members of the Damages Class who reside in North
17 Carolina and/or purchased PSPs in North Carolina were deprived of free and open
18 competition in North Carolina; and (4) Plaintiff and the members of the Damages
19 Class who resided in North Carolina and/or purchased PSPs in North Carolina paid
20 supracompetitive, artificially inflated prices in North Carolina for PSPs.

21 (d) During the Class Period, Defendants' illegal conduct substantially
22 affected North Carolina commerce and consumers.

23 (e) During the Class Period, each of the Defendants named in this Class
24 Action Complaint, directly, or indirectly and through affiliated they dominated and
25 controlled, manufactured, sold, and/or distributed PSPs in North Carolina.

26 (f) Plaintiff and the members of the Damages Class seek actual damages
27 for their injuries caused by these violations in an amount to be determined at trial
28 and are threatened with further injury. Defendants have engaged in unfair

1 competition or unfair or deceptive acts or practices in violation of North Carolina
 2 Gen. Stat. § 75-1.1, *et seq.*, and, accordingly, Plaintiff and the members of the
 3 Damages Class seek all relief available under that statute.

4 98. Defendants have engaged in unfair competition or unfair, unconscionable,
 5 or deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*

7 (a) Defendants' combinations or conspiracies had the following effects: (1)
 8 PSP price competition was restrained, suppressed, and eliminated throughout
 9 South Carolina; (2) PSP prices were raised, fixed, maintained, and/or stabilized at
 10 artificially high levels throughout South Carolina; (3) Plaintiff and the members of
 11 the Damages Class were deprived of free and open competition; and (4) Plaintiff
 12 and the members of the Damages Class paid supracompetitive, artificially inflated
 13 prices for PSPs.

14 (b) During the Class Period, Defendants' illegal conduct had a substantial
 15 effect on South Carolina commerce.

16 (c) As a direct and proximate result of Defendants' unlawful conduct,
 17 Plaintiff and the members of the Damages Class have been injured in their business
 18 and property and are threatened with further injury.

19 (d) Defendants have engaged in unfair competition or unfair or deceptive
 20 acts or practices in violation of S.C. Code Ann. §§ 29-5-10, *et seq.*, and, accordingly,
 21 Plaintiff and the members of the Damages Class seek all relief available under that statute.

23 99. Defendants have engaged in unfair competition or unfair, unconscionable,
 24 or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*

26 (a) Defendants agreed to, and did in fact, act in restraint of trade or
 27 commerce in a market that includes Vermont, by affecting, fixing, controlling,

1 and/or maintaining, at artificial and non-competitive levels, the prices at which
2 PSPs were sold, distributed, or obtained in Vermont.

3 (b) Defendants deliberately failed to disclose material facts to Plaintiff
4 and the members of the Damages Class concerning Defendants' unlawful activities
5 and artificially inflated prices for PSPs. Defendants owed a duty to disclose such
6 facts, and Defendants breached that duty by their silence. Defendants
7 misrepresented to all purchasers during the Class Period that Defendants' PSP
8 prices were competitive and fair.

9 (c) Defendants' unlawful conduct had the following effects: (1) PSP price
10 competition was restrained, suppressed, and eliminated throughout Vermont; (2)
11 PSP prices were raised, fixed, maintained, and/or stabilized at artificially high
12 levels throughout Vermont; (3) Plaintiff and the members of the Damages Class
13 were deprived of free and open competition; and (4) Plaintiff and the members of
14 the Damages Class paid supra-competitive, artificially inflated prices for PSPs.

15 (d) As a direct and proximate result of the Defendants' violations of law,
16 Plaintiff and the members of the Damages Class suffered an ascertainable loss of
17 money or property as a result of Defendants' use or employment of unconscionable
18 and deceptive commercial practices as set forth above. That loss was caused by
19 Defendants' willful and deceptive conduct, as described herein.

20 (e) Defendants' deception, including their affirmative misrepresentations
21 and omissions concerning the price of PSPs, likely misled all purchasers acting
22 reasonably under the circumstances to believe that they were purchasing PSPs at
23 prices set by a free and fair market. Defendants' misleading conduct and
24 unconscionable activities constitute unfair competition or unfair or deceptive acts
25 or practices in violation of 9 Vermont § 2451, *et seq.*, and, accordingly, Plaintiff
26 and the members of the Damages Class seek all relief available under that statute.

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COUNT IV
UNJUST ENRICHMENT
(on behalf of Plaintiff and the Damages Class)

100. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

101. As a result of their unlawful conduct described above, Defendants have and will continued to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, as a minimum, unlawfully inflated prices and unlawful profits of PSPs.

10 102. Defendants have benefitted from their unlawful acts and it would be
11 inequitable for Defendants to be permitted to retain any of the ill-gotten gains
12 resulting from the overpayment made by Plaintiff and the members of the
13 Damages Class for PSPs.

14 103. Plaintiff and the members of the Damages Class are entitled to the
15 amount of Defendants' ill-gotten gains resulting from their unlawful, unjust, and
16 inequitable conduct. Plaintiff and the members of the Damages Class are entitled to
17 the establishment of a constructive trust consisting of all ill-gotten gains from
18 which Plaintiff and the members of the Damages Class may make claims on a pro
19 rata basis.

20 104. Pursuit of any remedies against the entities from which Plaintiff and the
21 members of the Damages Class purchased PSPs subject to Defendants' conspiracy
22 would have been futile, given that those entities did not take part in Defendants'
23 conspiracy.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

27 A. That the Court determine that this action may be maintained as a class
28 action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and

1 direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the
2 Federal Rules of Civil Procedure, be given to members of the Class;

3 B. That the Court determine that this action may be maintained as a class
4 action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and
5 direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the
6 Federal Rules of Civil Procedure, be given to members of the Class;

7 C. That the unlawful conduct, contract, conspiracy, or combination alleged
8 herein be adjudged and decreed:

- 9 1. An unreasonable restraint of trade or commerce in violation of
10 Section 1 of the Sherman Act;
- 11 2. A *per se* violation of Section 1 of the Sherman Act;
- 12 3. An unlawful combination, trust, agreement, understanding, and/or
13 concert of action in violation of the state antitrust and unfair
14 competition, unjust enrichment, and consumer protection laws as
15 set forth herein;

16 D. That Plaintiff and the members of the Damages Class recover damages
17 to the maximum extent allowed under such laws, and that a joint and several
18 judgment in favor of Plaintiff and the members of the Damages Class be entered
19 against Defendants in an amount to be trebled to the extent such laws permit;

20 E. That Plaintiff and the members of the Damages Class recover damages
21 to the maximum extent allowed by such laws, in the form of restitution and/or
22 disgorgement of profits unlawfully gained from them;

23 F. That Defendants, their affiliates, successors, transferees, assignees and
24 other officers, directors, partners, agents and employees thereof, and all other
25 persons acting or claiming to act on their behalf or in concert with them, be
26 permanently enjoined and restrained from in any manner continuing, maintaining or
27 renewing the conduct, contract, conspiracy or combination alleged herein, or from
28 entering into any other contract, conspiracy or combination having a similar purpose

1 or effect, and from adopting or following any practice, plan, program or device
2 having a similar purpose or effect;

3 G. That Plaintiff and the members of the Damages Class be awarded pre-
4 and post-judgment interest as provided by law, and that such interest be awarded at
5 the highest legal rate from and after the date of service of this Complaint;

6 H. That Plaintiff and the members of the Damages Class recover their costs
7 of suit, including reasonable attorneys' fees, as provided by law; and

8 I. That Plaintiff and the members of the Damages Class have such other
9 and further relief as the case may require and the Court may deem just and proper.

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Demand For Jury Trial

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Plaintiff requests a jury trial on all matters triable.

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Dated: August 24, 2015

Respectfully submitted,

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By s/ Michael J. Flannery

Michael J. Flannery (Cal. Bar No. 196266)

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